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No. 90-1809

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

JOAN P. WHITMER,
Petitioner,

v.

CITY OF CHICAGO, a Municipal Corporation, JOHN HANCOCK MUTUAL LIFE INSURANCE CO., SUDLER & CO., and HOMEOWNERS ASSOCIATION,
Respondents.

On Petition For A Writ Of Certiorari To The Appellate Court of Illinois, First Judicial District

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS FOR REVIEW

Whether petitioner may seek relief from an otherwise non-reviewable order by raising unsubstantiated claims of federal constitutional violations by the state appellate court in its review process.

Whether the Illinois Appellate Court's order, reversing and remanding with directions, violated petitioner's constitutional rights to due process, equal protection and access to the courts.

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JURISDICTION

The Petition for Writ of Certiorari does not present this Court with any jurisdictional basis for review of the claims raised by petitioner. Petitioner has not challenged as unconstitutional any state statute, nor has she demonstrated a "title, right, privilege, or immunity under the Constitution" pursuant to 28 U.S.C. § 1257(a) (1988). In addition,

the state appellate court did not decide a federal question conflicting with another state court of last resort or with a Federal Court of Appeals so as to invite review under Supreme Court Rule 10.1(b). Finally, the state appellate court did not decide either an important, unsettled question of federal law or a federal question in a way which conflicts with this Court's decisions. Sup. Ct. R. 10.1(c). *See Henry v. Mississippi*, 379 U.S. 443, *reh'g denied*, 380 U.S. 926 (1965) (denying review of state court decision grounded solely in state law practice and procedure).

STATEMENT OF THE CASE

Petitioner Joan P. Whitmer ("petitioner" or "Whitmer") and her husband purchased a condominium on the 85th floor of the John Hancock Center, located in Chicago, Illinois, on or about February 28, 1977.[1] (R. C-28h.) The City of Chicago originally brought this state court action in the Circuit Court of Cook County ("Circuit Court") on July 22, 1983 alleging violations of the city building code, *City of Chicago v. John Hancock Mutual Ins. Co., Sudler & Co., and Homeowners Association*, No. 83 M1 404279. (R. C-2.) Petitioner appeared at the first hearing in the case on August 16, 1983. (R. C-15.)

[1] Petitioner's statement of the case omits and mischaracterizes much of the procedural history in this action and is replete with evidentiary allegations that have no basis in the record. Therefore, respondents present this Court with a short summary of the history of this case.

On September 13, 1983, Whitmer presented a petition for leave to intervene. (R. C-134.) During the hearing on her petition in the Circuit Court, Whitmer stated that she would be prepared for trial on October 11, 1983, if her petition was granted. (R. Vol. VI, Tab Sept. 13, 1983, at 13-14.) The Circuit Court, however, denied her petition for leave to intervene and petitioner appealed. (R. C-135.) At no time did petitioner seek a stay of the proceedings pending resolution of her appeal even though petitioner was aware of the fact that the case was proceeding while her appeal was pending. (R. C-207.)

On August 17, 1984, the First Judicial District of the Appellate Court of Illinois ("Appellate Court") held that the Circuit Court erred in denying Whitmer's petition for leave to intervene, and remanded the cause for further proceedings. *City of Chicago v. John Hancock Mutual Life Ins. Co.*, 127 Ill. App. 3d 140, 468 N.E.2d 428, 432-34 (1st Dist. 1984). In March, 1985, petitioner intervened in that lawsuit.

While Whitmer's appeal was pending, the City of Chicago proceeded to prosecute its complaint in an orderly fashion. For example, on May 29, 1984, the Court determined that while the windows of the residential or condominium portion of the John Hancock Center (approximately floors 44 through 92) were operable, they were not easily operable as required by the Building Code. (R. C-254 to C-255, C-268, C-261 [sic].) Having made that determination, the Court scheduled the matter for a hearing to determine the type of window hardware which would make the windows easily operable. The actual hearing on that matter was not held until March 11, 1987.

At the time of the Circuit Court's determination that the windows were not easily operable and at all times from when she first attempted to intervene on August

16, 1983, until the Circuit Court permitted successor counsel to withdraw on January 27, 1987, petitioner was represented by counsel. (R. C-15, C-279, C-287, C-317 to C-318, C-319.) During this time, counsel for petitioner took no action to stay the Circuit Court proceedings pending resolution of the intervention issue on appeal or, upon the order to allow intervention, to vacate or appeal any of the orders entered prior to Whitmer's intervention. In addition, the March 11, 1987 hearing, on the question of the type of window hardware, did not occur until more than sixty (60) days after Whitmer was given leave to retain new counsel on January 20, 1987. (R. Vol. VI, Tab Mar. 11, 1987.) On March 11, 1987 the Circuit Court held a hearing on those issues remaining open from earlier rulings, received testimony and demonstrative evidence, permitted the cross-examination of witnesses, and entered an order approving a type of window hardware for use in the John Hancock Center. (R. C-376 to C-378.)

Petitioner appealed this March 11, 1987 order ("Circuit Court Order") to the Illinois Appellate Court.[2] The Appellate Court reversed and remanded the Circuit Court Order, holding:

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[2] The resulting order pursuant to Illinois Supreme Court Rule 23 is attached to the Petition for Writ of Certiorari as Appendix B. Citations to the Appellate Court Order are hereinafter referred to as "B-#". An appeal may be disposed of under Illinois Supreme Court Rule 23 where the case does not (1) involve "an important new legal issue or [modify] or [question] an existing rule of law"; (2) consider "a conflict or apparent conflict of authority within the appellate court"; (3) offer a "decision of substantial public interest"; or (4) offer an opinion which is "a significant contribution to legal literature." If a party has reasons to support the change in designation from a Rule 23 order to a published decision, it may move the panel for publication.

> [T]he circuit court permitted Whitmer only one week to retain new counsel. Given Whitmer's disability and the complexity of the case, we must conclude that the circuit court abused its discretion by allowing her only one week to retain new counsel.

Appellate Court Order, at B-8. The Appellate Court noted that Whitmer's last attorney withdrew in January, 1987 and the Circuit Court had provided Whitmer with a one week period in which to retain an attorney. *Id.* at B-9 to B-10. The Appellate Court stated:

> We do not wish to be understood as holding that Whitmer had a constitutional right to counsel that the circuit court somehow violated. Instead, we think that because of her disability she needed counsel in order to meaningfully exercise her statutory right to intervention at the trial of March 11, 1987.

Id. at B-8 to B-9. Accordingly, the Appellate Court remanded the case for a new hearing, directing that the Circuit Court "permit Whitmer 35 day [sic] to retain new counsel" and that an evidentiary hearing proceed 35 days thereafter. *Id.* at B-9.

Following the entry of the Illinois Appellate Court's order, petitioner attempted to seek a rehearing. She did not file her Petition for Rehearing within the time set by the rules. Rather, she filed a Motion to Extend Time to File Petition for Rehearing on a Friday, and then attempted to file her Petition for Rehearing the next Monday, July 23, 1990. Petition, at 9. On August 16, 1990, the Appellate Court denied Whitmer's Motion to Extend Time to File Petition for Rehearing. Whitmer then filed a petition for leave to appeal in the Supreme Court of Illinois on or about October 11, 1990. The Illinois Supreme Court denied that petition on December 4, 1990, and peti-

tioner filed her Petition for Writ of Certiorari in this Court on May 3, 1991.[3]

SUMMARY OF ARGUMENT

Petitioner does not challenge the Circuit Court Order from which her appeal originally emanated, rather she now petitions for review of the subsequent Appellate Court Order which ruled in her favor, reversing the Circuit Court Order and remanding with directions. The basis for the petition is alleged potential violations of due process in the Appellate Court's remand with directions. Petitioner's proper recourse is to return to the Circuit Court, raise and be heard on her objections in the first instance,

[3] This Court should take judicial notice of the pendency in the federal court system of a case entitled *Frank L. and Joan P. Whitmer v. John Hancock Mutual Life Ins. Co., et al.*, Case No. 89 C 8341. *See E.I. DuPont de Nemours & Co., Inc. v. Cullen*, 791 F.2d 5 (1st Cir. 1986) (court of appeals could take judicial notice of complaint filed in state court action where undisputedly authentic copy appended to party's brief). On February 3, 1988, petitioner and her husband filed their First Amended Complaint against respondents and others in the Western Division of the United States District Court for the Northern District of Illinois (the "Federal action"). Respondents lodged with the Clerk of Court a true and correct copy of the Complaint. The Complaint alleged violations of RICO, the Civil Rights Act, as well as numerous pendent state law claims which were raised in this state court action. At pages 2-3 of her petition, under the section entitled "Constitutional and Statutory Provisions Involved," petitioner cites the Fifth and Fourteenth Amendments as the legal basis for her petition and the actions of the Seventh Circuit, in the Federal litigation, as the factual basis for assertion of jurisdiction. Actions of a federal court, in an unrelated action, cannot provide a basis for review by Writ of Certiorari of a state court decision.

and allow the Circuit Court to alleviate any objections that are just. Furthermore, petitioner's contention that the Appellate Court Order did, in fact, violate her federal constitutional rights must be rejected because the record reflects that the Appellate Court afforded her a full and fair hearing and accommodated her status as a *pro se*, allegedly hearing impaired litigant. Therefore, this Court should deny the Petition.

ARGUMENT

A.

PETITIONER MAY NOT SEEK RELIEF FROM AN OTHERWISE NON-REVIEWABLE ORDER BY RAISING UNSUBSTANTIATED CLAIMS OF FEDERAL CONSTITUTIONAL VIOLATIONS BY THE STATE APPELLATE COURT IN ITS REVIEW PROCESS.

In the Petition for Writ of Certiorari, Whitmer seeks relief from the Appellate Court Order. Unlike the usual appeal, Whitmer does not direct her attack to the Circuit Court Order from which her appeal originally emanated. Rather, petitioner now claims that the Appellate Court's order, remanding the case with directions, violates her rights to due process of law.

1. The Appellate Court Order Was Based Solely On State Law Practice And Procedure.

The Appellate Court's reversal of the Circuit Court Order was predicated on the determination that under all of the circumstances the trial court had abused its discretion by permitting Whitmer only one week to retain new

counsel. Appellate Court Order, at B-8. Generally, this Court will not review state court decisions grounded in state law, particularly questions of state practice and procedure. *Agins v. City of Tiburon*, 447 U.S. 255, 259 n.6 (1980) (objection to state court's application of state law does not raise federal question appropriate for review by this Court). The original appeal and the Appellate Court's treatment of that appeal clearly are matters of state law.

Whitmer asserts that the Appellate Court Order improperly restricts her intervention rights under Section 2-408 of the Illinois Code of Civil Procedure. Ill. Rev. Stat. ch. 110, ¶¶ 1-101 *et seq.* (1982). Section 2-408 authorizes permissive intervention and intervention as of right. Ill. Rev. Stat. ch. 110, ¶ 2-408 (1982). Intervention serves a state law purpose of expediting litigation by disposing of an entire controversy among parties involved in a single action and by preventing a multiplicity of actions. *Bishop v. Village of Brookfield*, 99 Ill. App. 3d 483, 425 N.E.2d 1113 (1st Dist. 1981). Intervention, however, is not an independent proceeding but an ancillary and supplemental one which is subordinate to the main proceeding. *People ex rel. Scott v. Illinois Protestant Children's Home, Inc.*, 95 Ill. App. 3d 552, 420 N.E.2d 448 (1st Dist. 1981).

In the earlier Appellate Court decision reversing the Circuit Court's denial of Whitmer's petition to intervene, the court held that Whitmer was entitled to intervene and remanded the cause for that purpose. In the subsequent appeal, the Appellate Court determined that the Circuit Court denied Whitmer's ability to participate fully as an intervenor by limiting her time to retain new counsel prior to the final court hearing. Whitmer does not challenge the reversal of the Circuit Court Order and the remand of the case. Rather, she challenges the refusal of the Ap-

pellate Court to grant her demand that all orders in this case going back to September 13, 1983 be vacated and the Appellate Court's instructions that she proceed in a timely fashion on remand. Petition, at 11. Petitioner now attempts to elevate the Appellate Court's instructions for future proceedings into a denial of due process, in order to invoke this Court's jurisdiction under 28 U.S.C. § 1257(a) (1988).

Whitmer then argues that the Appellate Court Order improperly restricts her intervention rights under Section 2-408(f), because, in petitioner's words, the Appellate Court previously ordered her intervention "as of right without any restriction." *See* Petition, at 6. Whether or not the decision can be construed so broadly, the subsequent order of the same Appellate Court is a matter of application of the state law of intervention. As such, it is proper for the state reviewing court to give guidance to a lower court on remand.

Whitmer must return to the state trial court and proceed with the merits of her case. At that time, Whitmer can raise and be heard on any objection she may have, and the Circuit Court may well be able to craft a means of alleviating any complaint that is just. Petitioner's claims here amount to an attempt to get a prior adjudication from this Court of matters which have not yet occurred. She is asking this Court to grant relief from an alleged violation of due process that has not—and likely will not—happen. The directions to the Circuit Court have not been implemented. Thus, no issue of whether those directions, in fact, caused any justiciable harm to Whitmer is ripe for this Court's determination. *See FCC v. Pacifica Foundation*, 438 U.S. 726, 734-35, *reh'g denied*, 439 U.S. 883 (1978) (courts are loathe to issue advisory opinions).

2. Whitmer Cannot Multiply Issues On Appeal In Order To Create A Federal Question To Invoke This Court's Jurisdiction.

In Illinois, when a reviewing court reverses and remands an order with specific instructions as to the actions to be taken by the trial court, the question properly presented on a subsequent appeal is whether the trial court followed the appellate court's mandate. *Yonan v. Oak Park Federal Sav. & Loan Ass'n*, 27 Ill. App. 3d 967, 326 N.E.2d 773 (1st Dist. 1975). The Appellate Court Order determined that the Circuit Court Order violated its original mandate by overly limiting Whitmer's time to retain counsel. Thus, the only issue subject to review by the Appellate Court was whether the Circuit Court abused its discretion in applying the intervention statute. However, that is not the issue framed by the petitioner.

Instead, petitioner's contention, that the Appellate Court Order when implemented on remand will violate her federal constitutional rights, raises issues which require an evidentiary hearing in the first instance in this Court as to what may occur in the future. *See Cardinale v. Louisiana*, 394 U.S. 437 (1969) (maintaining that this Court will not decide federal constitutional issues raised before it for first time on review of state court decisions); *Edelman v. California*, 344 U.S. 357 (1953) (holding the Court without power to review federal constitutional issues raised for first time on review).

The petition is fraught with allegations that the Appellate Court Order violated petitioner's right to due process, equal protection and access to the courts. Although this Court may review a state court decision wherein the petitioner demonstrates that the state violated her federal constitutional rights, this Court has declined to review

claims of federal constitutional violations which are frivolous or fail to meet the requisite threshold of significance.[4] *See Williamson v. Hopewell Redev. & Housing Auth.*, 371 U.S. 234 (1963) (dismissing appeal for want of substantial federal question); *Palmer Oil Corp. v. Amerada Petroleum Corp.*, 343 U.S. 390 (1952) (dismissing appeal for failure to raise substantial federal question where appellants argued state statute and order thereunder violated due process and equal protection rights). Mere allegations of due process violations are insufficient to carry petitioner's burden of showing affirmatively that this Court has jurisdiction. *Dep't of Mental Hygiene v. Kirchner*, 380 U.S. 194, 197 (1965) (expressing reluctance to assume jurisdiction of case from state court unless clear that federal question is necessarily presented). Petitioner has not presented facts that clearly demonstrate that the Appellate Court infringed upon her right to due process. *See Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 821-25 (1986) (indicating that mere allegations of due process violations insufficient to invoke Court's jurisdiction).

Petitioner alleges that the trial schedule set by the Appellate Court violates her right to due process. *See* Petition, at 12-15, 18-19, 21-23, 26 & 28. A trial schedule is a discretionary matter for trial courts, both state and federal, in managing their dockets and expediting the final

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[4] Petitioner also seeks relief under the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 *et seq.* (1973), on the ground that the Appellate Court Order discriminates against her on the basis of her disability. This is another allegation that has no basis in the record. In fact, the Appellate Court allowed petitioner to proceed at hearings with special equipment. Appellate Court Order, at B-6. Moreover, petitioner is raising an issue which would require a premature evidentiary hearing in the first instance in the reviewing court.

resolution of claims. *See Argersinger v. Hamlin*, 407 U.S. 25, 38 (1972) (stating that Supreme Court's function is not to manage affairs of state courts but only to make clear federal constitutional requirements). Furthermore, the trial court has significant discretion, even on the scheduled remand, to provide any relief to Whitmer that justice may require. *See, e.g.*, Ill. Sup. Ct. R. 183 (1991) (governing extensions of time).

Additionally, until the petitioner can present facts demonstrating that the trial schedule on remand actually denied her rights to due process of law, review by this Court would be premature. Federal courts are not empowered to issue advisory opinions, *FCC v. Pacifica Foundation*, 438 U.S. 726, 734-35, *reh'g denied*, 439 U.S. 883 (1978), and will not render an opinion on claims not reduced to judgment by a trial court. *Hales v. Green Colonial, Inc.*, 490 F.2d 1015, 1017 n.3 (8th Cir. 1974).

Contrary to petitioner's assertions, the Appellate Court accommodated her at every turn: it granted her 20 extensions of time; allowed her to proceed with special equipment during a number of oral arguments; and gave her an opportunity to litigate the merits underlying the Circuit Court Order with the assistance of counsel.[5] Appellate Court Order, at B-6 to B-7. Despite the fact that petitioner raises claims of potential due process violations, she does not cite any authority—or any facts—to support her contention that the Appellate Court Order constitutes a present violation of her constitutional rights. Therefore, this Court should deny the Petition for Writ of Certiorari.

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[5] Petitioner still has not retained new counsel of record nearly one year after issuance of the Appellate Court's mandate.

B.

THE ILLINOIS APPELLATE COURT ORDER DOES NOT VIOLATE PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS.

Whitmer was represented by counsel from the time of her intervention until just two months prior to entry of the Circuit Court Order (March 11, 1987).[6] The various strategic decisions made by Whitmer with the advice of her attorneys during the 3-1/2 years she was represented by counsel cannot now be disavowed by Whitmer because she is not satisfied with the outcome. All orders entered by the Circuit Court and Appellate Court prior to January, 1987 are equally binding on Whitmer. Whitmer's decisions with the advice of her attorneys to forego discovery, not to seek a stay in the Circuit Court proceedings pending Whitmer's appeal of the Circuit Court's denial of her intervention, not to file an amended complaint, not to timely initiate the other steps that petitioner now seeks, or not to timely appeal prior orders, do not entitle her to reopen and relitigate matters decided prior to January, 1987.

The Appellate Court Order properly permits Whitmer to readdress only that ruling made when she was without legal representation, namely the Circuit Court Order. The Appellate Court, in vacating the Circuit Court Order and remanding the case to the Circuit Court for additional proceedings, granted to Whitmer all the relief it could for those matters then properly before the Appellate Court. *See Yonan v. Oak Park Federal Sav. & Loan Ass'n*, 27 Ill. App. 3d 967, 326 N.E.2d 773 (1st Dist. 1975) (question properly presented on subsequent appeal is whether

[6] The March 11, 1987 hearing did not occur until more than sixty days after petitioner was given leave to retain new counsel.

trial court followed appellate court mandate). The various orders that were entered prior to the Circuit Court Order, which Whitmer now seeks to challenge, are final orders from which a timely appeal has not been taken and with respect to which the time to appeal long since has expired.[7] Due process for all litigants requires that courts not vacate valid and final orders from which no timely appeal was taken. *See Manis v. Sterling*, 862 F.2d 679 (8th Cir. 1988) (court of appeals lacks power to extend time for filing motion to file untimely appeal); *Needham v. White Laboratories, Inc.*, 639 F.2d 394 (7th Cir.), *cert. denied*, 454 U.S. 927 (1981) (holding that court of appeals lacks jurisdiction over appeal if notice of appeal not timely filed). Accordingly, this Court should deny Whitmer's Petition for Writ of Certiorari.

1. The Appellate Court Order Affords Petitioner A Full And Fair Opportunity To Argue The Merits Of Her Case On Remand To The Circuit Court.

The Appellate Court Order specifically provides for remand to the Circuit Court "for a hearing on the merits of her complaint, which have not been addressed previously," *i.e.*, while Whitmer was fully represented by an attorney. Appellate Court Order, at B-9. The Appellate Court Order goes on to provide that "[t]he circuit court may consider whatever evidence it deems relevant. . . ." *Id.* The Appellate Court Order, therefore, does not restrict the evidence. Indeed, the Appellate Court Order specifical-

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[7] For example, the Appellate Court, in an order dated September 24, 1987, dismissed as untimely Whitmer's efforts to belatedly appeal final orders dated January 11, 1984, May 20, 1984, and May 29, 1984. Whitmer has not challenged those dismissals here or in any other reviewing court. *See* Appellate Court Order, at B-6.

ly permits a contest of those matters raised in Whitmer's complaint and not previously decided.

Consistent with the dictates of Ill. Rev. Stat. ch. 110, ¶ 2-408(f), Whitmer is bound by the record of the case at the time of intervention, and she cannot change the issues for her own purposes. *Home Ins. Co., Inc. v. Lorelei Restaurant Co., Inc.*, 83 Ill. App. 3d 1083, 404 N.E.2d 895, 898 (1st Dist. 1980) (intervenor cannot change proceedings by introducing new matters not relevant or which unduly complicate it). Specifically, Whitmer does not have the right to turn this straight-forward building code violation case into wide-ranging environmental litigation based on alleged rights and claims personal to Whitmer.[8] Rather, she is confined to presentation of her particular interest in the underlying action, *i.e.*, the suit by the City of Chicago regarding window ventilation. Contrary to Whitmer's assertions, such relief is completely consistent with the requirements of due process.

Furthermore, petitioner has raised in this Court a new contention in regard to the timing of discovery on remand. Petitioner also implies that the state courts denied her discovery. This is simply not true. Whitmer had two years

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[8] The Federal action filed by Mrs. Whitmer and her husband assert the same environmental claims which Whitmer repeatedly has attempted to raise in her appeals of the Circuit Court Order. The Federal action, rather than this proceeding commenced by the City of Chicago on window ventilation requirements, provides the avenue through which Whitmer may assert any environmental claims that she believes possess merit. Thus, the Appellate Court's refusal to permit Whitmer to litigate her environmental claims in the instant action is not prejudicial to Whitmer in any manner. The availability of the federal forum, coupled with the fact that the instant petition does not fall within that class of petitions for which this Court ordinarily grants certiorari, *see* Supreme Court Rule 10.1 (1991), adequately supports a denial of Whitmer's Petition.

after the Appellate Court allowed her intervention to take discovery. During most of that time period, Whitmer was represented by counsel. (R. C-15 to C-287.) Whitmer is bound by her prior decision, while represented by attorneys, not to conduct discovery.

On remand, if discovery is indeed necessary to resolution of those issues remaining, the trial court is armed with procedural means to timely resolve discovery issues. The time frames set forth in the Illinois Supreme Court Rules governing discovery provide guidelines for the expeditious and orderly resolution of claims. *See* Ill. Sup. Ct. R. 183 (1991) (for good cause shown, court may extend time for "doing of any act which is required . . . to be done within a limited period"); Ill. Sup. Ct. R. 201(c) (1991) (court may alter discovery rules to prevent injustice). The Circuit Court can also shorten the time for response to discovery. *Id.* If petitioner finds the timing in those Rules to be too long or too short, she can move the court for relief based upon then existing factual circumstances. Until such issues are presented to the Circuit Court and a decision is made by the trial court there is no issue for this or any other court to review.

2. Petitioner Received A Full And Fair Hearing In The Appellate Court.

Whitmer has challenged, on various federal and state constitutional and statutory grounds, the Appellate Court's resolution, in her favor, of her appeal. As noted in the Appellate Court Order, the Appellate Court permitted the appeal to pend for "nearly three years," because Whitmer requested and the Appellate Court granted "approximately 20 extensions of time." Appellate Court Order, at B-6.

The Appellate Court granted Whitmer the unusual opportunity to have lengthy oral argument on motions, and "to proceed with special equipment" due to her "claim to be hearing impaired." *Id.* Whitmer was accorded a full hearing of her claims. The record conclusively demonstrates that the Appellate Court has denied Whitmer no procedural or substantive right.

Whitmer should not be permitted to further delay the resolution of this building code action. The underlying action involves window hardware, not the matters upon which Whitmer seeks to have this Court rule. Indeed, Whitmer's actions here with respect to her own personal claims (claims which, as discussed above, are fully set out in her Federal action), do no more than unnecessarily delay resolution of the matter for all the current residents of the John Hancock Center and the 175 East Delaware Place Homeowners Association.

CONCLUSION

The Appellate Court Order provides Whitmer, on remand in the Circuit Court, every opportunity to present evidence in support of her pending claim. It is the Circuit Court of Cook County, and not the United States

Supreme Court, that should hear this evidence. For the reasons stated herein, this Court should deny Whitmer's Petition for Writ of Certiorari.

Respectfully submitted,

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